Oliver v. Napier et al (INMATE 2) Doc. 22

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

DAVID O. OLIVER, #285 230,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CASE NO. 2:13-CV-14-WKW
	)	[WO]
VICTOR NAPIER, *et al.*,	)	
	)	
Defendants.	)	

ORDER

Before the court is Plaintiff David O. Oliver's Motion for Temporary Restraining Order ("TRO"). Mr. Oliver is an inmate incarcerated at Kilby Correctional Facility located in Mt. Meigs, Alabama. As grounds for a TRO, he asserts that the warden and two named correctional officers are "constantly harassing [him] because of [his] filing this Complaint. . . ." (Doc. # 20, at 1.)

A temporary restraining order may be issued without notice only if

> (A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and
> (B) the movant[ ] . . . certifies in writing any efforts made to give notice and the reasons why it should not be required.

Fed. R. Civ. P. 65(b)(1). A temporary restraining order also requires the same four elements as a preliminary injunction, and the movant bears the burden of

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demonstrating that they are present. *See Parker v. State Bd. of Pardons & Paroles*, 275 F.3d 1032, 1034–35 (11th Cir. 2001).[1]

Mr. Oliver has not demonstrated the requirements for Rule 65(b) relief. First, Mr. Oliver's motion does not contain sworn testimony. Second, Mr. Oliver has not shown or argued that he will suffer immediate and irreparable injury if Defendants are given an opportunity to respond to the motion. Third, Mr. Oliver has not demonstrated that a TRO is necessary to prevent irreparable injury. Fourth, he has not certified in writing any efforts made to give notice and the reasons why it should not be required. Fifth, he has not demonstrated a substantial likelihood of success on the merits.

Accordingly, it is ORDERED that the Motion for Temporary Restraining Order (Doc. # 20) is DENIED.

DONE this 17th day of April, 2013.

/s/ W. Keith Watkins
CHIEF UNITED STATES DISTRICT JUDGE

[1] These four elements are "(1) a substantial likelihood of success on the merits; (2) irreparable injury absent an injunction; (3) the injury outweighs whatever damage an injunction may cause the opposing party; and (4) an injunction is not adverse to the public interest." *Citizens for Police Accountability Political Comm. v. Browning*, 572 F.3d 1213, 1217 (11th Cir. 2009).